

## REMARKS

The specification has been amended to add priority information. In addition, the specification on page 15 has been amended to identify the table number that lists the species and accession numbers of various preferred yeast strains and the functions of the respective strains.

Claims 1-32 were pending in this application. Applicant has cancelled claims 1-32 without prejudice and added new claims 33-53 to more clearly describe certain embodiments of the present invention. Applicant fully reserves the right to prosecute the cancelled subject matter in one or more related applications.

Upon entry of the amendments, claims 33-53 will be pending in the present application. Specifically, new claims 33 and 34 are directed to methods for preparing a biological fertilizer composition by mixing or culturing at least two yeast cell components, and adding poultry manure to the yeast cells.

New claims 33 and 34 correspond to cancelled claims 16 and 18. Support for new claims 33 and 34 can be found in the specification at, *inter alia*, page 3, line 30 to page 4, line 4; page 4, lines 7-13; page 10, line 22 to page 11, line 14; and page 19, line 23 to page 55, line 28.

New dependent claims 35 and 36 are directed to the methods of new claims 33 and 34, respectively, and further requires the mixing or culturing of additional yeast cell components. New claims 35 and 36 correspond to cancelled claims 17 and 19.

New dependent claims 37 and 40 relate to the addition of starch to the mixed or cultured yeast cells. Support for new claims 37 and 40 can be found in the specification at, *inter alia*, page 20, lines 6-8; page 23, lines 27-29; page 26, line 34 to page 27, line 1; page 29, line 35 to page 30, line 2; page 36, lines 8-10; page 39, lines 5-7; page 42, lines 5-7; page 46, lines 28-30; page 52, lines 1-3; and cancelled claims 20 and 21.

New dependent claims 38 and 41 relate to the addition of an inorganic substrate component to the mixed or cultured yeast cells, and new dependent claims 39 and 42 provides a list of inorganic substrate component that can be used to prepare the biological fertilizer compositions. Support for new claims 38, 39, 41 and 42 can be found in the specification at, *inter alia*, page 3, line 21; page 7, lines 2-6; page 16, lines 12-15; and cancelled claims 20 and 21.

New dependent claim 43 recites additional steps of processing the biological fertilizer compositions that are formed by the methods of new claims 33-36. New claim 43 corresponds to cancelled claims 22 and 23.

New dependent claims 44-49 recite the types of yeast cells that can be used in the methods of new claims 33-36. Support for new claims 44-49 can be found in the specification at, *inter alia*, page 4, lines 5-7; and page 11, line 15 to page 14, line 33.

New dependent claims 50 and 51 are directed to methods that require the mixing or culturing of at least six yeast cell components, and new dependent claims 52 and 53 are directed to methods that require the mixing or culturing of at least nine yeast cell components. Support for new claims 50-53 can be found in the specification at, *inter alia*, page 3, lines 19-21; page 3, line 30 to page 4, line 4; page 4, lines 10-11; and page 16, lines 23-26. No new matter has been added.

### **THE RESTRICTION REQUIREMENT**

The Examiner has required restriction under 35 U.S.C. § 121 to one of the following inventions:

- I. Claims 1-2, 5-9, 11, 15 and 29, drawn to a biological fertilizer composition comprising poultry manure and dried yeast cells that can fix nitrogen, decompose phosphorus, potassium, and antibiotics; can suppress growth of pathogens; can overproduce ATP and growth factors, classified in class 435, subclass 171.
- II. Claims 3-10, 12-15 and 30, drawn to a second biological fertilizer composition comprising a plurality of dried yeast cells grown in electromagnetic fields of varying frequency and strength, classified in class 435, subclass 69.9 or 255.2.
- III. Claims 16, 18, 20, 22 and 31, drawn to a method to prepare a biological fertilizer composition wherein first a mixture of yeast cells of varying physiological capabilities is cultured, and subsequently poultry manure is added to the said cultured yeast cell mixture, classified in class 435, subclass 254.2.
- IV. Claims 17, 19, 21, 23 and 32, drawn to a second method to prepare a biological fertilizer composition by first preparing a mixture of yeast cells of different physiological capabilities by culturing said yeasts in electromagnetic fields of varying frequency and strength, and subsequently adding poultry manure to the said cultured yeast cell mixture, classified in class 435, subclass 173.1.
- V. Claims 24-28, drawn to a method to enhance plant growth wherein a biological fertilizer prepared by mixing a mixture of yeast cells of different

physiological capabilities with poultry manure is applied, classified in class 504, subclass 173.1.

The Examiner contends that the inventions of Groups I-V are distinct, each from the other. In response, Applicant provisionally elects with traverse to prosecute the invention of Group III, *i.e.*, claims 16, 18, 20, 22 and 31.

The Examiner further indicates that if any one of Groups I-V is elected, Applicant is required to elect a single species in each one of the following categories:

- A. one of components claimed in claim 1(II)(a) through 1(III)(f);
- B. one of components claimed in claim 2(g) through 2(i);
- C. one of components claimed in claim 3(II)(a) through 3(III)(f);
- D. one of components claimed in claim 4(g) through 4(i);
- E. one of components claimed in claim 6;
- F. one of components claimed in claim 7; and
- G. one of components claimed in claims 13 and 14.

As a preliminary matter, Applicant respectfully submits that both claims 1 and 3 recite biological fertilizer compositions that comprise at least two yeast cell components. As such, the species election in A would require Applicant to elect one of components claimed in 1(II)(a) through 1(II)(c) and one of components claimed in claim 1(III)(d) through 1(III)(f), and the species election in C would require Applicant to elect one of components claimed in 3(II)(a) through 3(II)(c) and one of components claimed in claim 3(III)(d) through 3(III)(f).

In response to the species election, Applicant hereby provisionally elects with traversal the following species:

- A. the component claimed in claim 1(II)(a) and the component claimed in claim 1(III)(d);
- B. the component claimed in claim 2(g);
- C. the component claimed in claim 3(II)(a) and the component claimed in claim 3(III)(d);
- D. the component claimed in claim 4(g);
- E. the component *Saccharomyces cerevisiae* claimed in claim 6;
- F. the component *Saccharomyces cerevisiae* AS2.628 claimed in claim 7; and
- G. the component *Saccharomyces cerevisiae* AS2.628 claimed in claims 13 and 14.

Newly added claims 33-53 are readable on the elected species.

Applicant fully reserves the rights to prosecute the non-elected subject matter in one or more related applications.

Applicant submits that currently pending claims 1-32 have been cancelled and new claims 33-53 have been added to more clearly describe certain embodiments of the present invention. Applicant further submits that newly added claims 33-53 are directed to the inventions of Groups III and IV and do not read on the inventions of Groups I, II and V. Accordingly, the restriction requirement over Groups I, II and V is moot and should be withdrawn.

Applicant submits that the new claims that are based on the invention of Group III (*e.g.*, new claims 33 and 34) are directed to methods for preparing biological fertilizer compositions using poultry manure and at least two yeast cell components, and the new claims that are based on the invention of Group IV (*e.g.*, new dependent claims 35 and 36) are directed to methods for preparing biological fertilizer compositions using poultry manure, the same two yeast cells components that are used in new claims 33 and 34 (Group III), plus at least a third yeast cell component (Group IV). For the Examiner to search the methods of new dependent claims 35 and 36 (Group IV), he would necessarily search the methods of new claims 33 and 34 (Group III). Even assuming *arguendo* that Groups III and IV represented distinct or independent inventions, Applicant submits that to search the subject matter of these groups together would not be a serious burden on the Examiner, especially when both Groups III and IV are classified in the same class 435.

The M.P.E.P. § 803 (Eighth Edition, August 2001) states:

If the search and examination of an entire application can be made without serious burden, the examiner ‘must’ examine it on the merits, even though it includes claims to distinct or independent inventions.

Thus, in view of this provision, even if for arguments sake, the subject matter of Groups III and IV are distinct inventions, the subject matter of these groups would necessarily be searched and examined in the search of the subject matter of the elected Group III and therefore, the search of both Groups III and IV would not be a “serious burden” on the Examiner.

Accordingly, Applicant respectfully requests that the restriction requirement be modified such that Groups III and IV are combined and examined together, and that the subject matters of new claims 33-53 are examined within a single group.

Applicant reserves the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

**CONCLUSION**

Applicant respectfully requests that the above remarks be entered and made of record in the file history of the instant application.

Respectfully submitted,

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Enclosures